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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Attorney Docket No. AUS920010325US1

IN RE APPLICATION OF: Gutierrez, et al
Serial No. 09/852,831
Filed: May 10, 2001
For: RESERVE PRICE AUCTIONING

Examiner: James A. Kramer

Art Unit: 3627

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Brief is submitted in triplicate in support of the Appeal in the above-identified application.

CERTIFICATE OF MAILING
37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date below:

July 22, 2004
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63	I. With regard to the rejection of claims 1-26 under 35 USC
64	103(a) over Alaia et al, it is respectfully submitted that there
65	is no basis, disclosure, teaching or even suggestion in Alaia
66	sufficient to render the present invention (as presented in
67	currently pending claims 1-26) obvious.
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74

REAL PARTY IN INTEREST

75

76 The present application is assigned to International Business
77 Machines Corporation, the real party in interest.

78

79

80 RELATED APPEALS AND INTERFERENCES

81

82 No related appeal is presently pending.

83

84

85 STATUS OF THE CLAIMS

86

87 Claims 1-26 are pending and stand finally rejected by the
88 Examiner as noted in the Final Office Action mailed March 5,
89 2004.

90

91

92 STATUS OF AMENDMENTS

93

94 Prior to the Final Office Action (mailed 3/5/04), there was only
95 one Office Action mailed 9/24/03 and one Amendment mailed
96 12/22/03. The Second and Final Office Action rejected all 26
97 claims under 35 USC 103 over a single reference. The last entered
98 amendment was submitted 12/22/03 which amended the claims to the
99 text shown in the Appendix.

100

101

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SUMMARY OF THE INVENTION

The present application discloses a method and implementing system in which items are offered for auction sale at a network site to bidders who access the auction site (e.g., *inter alia*, page 4, lines 1-5). A seller is enabled to designate a reserve price (e.g., *inter alia*, page 5, line 30 et seq.) as well as a number of automatic auction extensions (e.g., *inter alia*, page 6, line 4 et seq.) to an initial auction period. If the designated reserve price for an item is not met during the initial auction period (e.g., *inter alia*, Fig. 4, #411), and the seller has authorized a designated number of auction extensions (e.g., *inter alia*, Fig. 4, #417, 419), the auction is automatically continued beyond the initial auction period and is automatically extended for the designated number of extensions (e.g., *inter alia*, page 7, line 7 et seq.) until either a bid for the reserve price is received or the number of authorized extensions has transpired (e.g., *inter alia*, Fig. 4, #419, 415).

120
121 The above methodology is set forth in pending claim 1, which
122 recites:

123
124 "1. A method for conducting an auction at an auction server for an item offered for sale, said
125 method comprising:

127 enabling a seller to designate a predetermined reserve price for said item;
128
129 enabling bidders to be connected to said auction server through an interconnection network;

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130
131 receiving price bids from said bidders for said item during an auction period;
132
133 determining that none of said price bids is equal to or greater than said predetermined reserve
134 price during said auction period;
135
136 determining that an extension of said auction period was authorized by a seller of said item if none
137 of said price bids was equal to or greater than said predetermined reserve price; and
138
139 automatically extending said auction period if said extension of said auction period was
140 authorized."

ISSUES

144
145 1. Is the Examiner's rejection of claims 1-26 under 35 USC 103(a)
146 as being unpatentable over Alaia et al, U. S. Patent 6,230,147 B1
147 (hereinafter referred to as "Alaia"), well founded?

GROUPING OF THE CLAIMS

151
152 For purposes of this Appeal, claims 1-13 stand or fall as a
153 group, and claims 14-25 stand or fall as a group and independent
154 claim 26 stands or falls alone. Method claim 1 and claims 2-13,
155 which ultimately depend from claim 1, comprise a group of various
156 combinations of the claimed methodology, independent medium claim
157 14 and claims 15-25, which ultimately depend from claim 14,
158 comprise a medium embodiment of the present invention and

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159 independent system claim 26 defines a system embodying the
160 disclosed methodology.

161

162

163 **ARGUMENT**

164

165 I. With regard to the rejection of claims 1-26 under 35 USC
166 103(a) over Alaia et al, it is respectfully submitted that there
167 is no basis, disclosure, teaching or even suggestion in Alaia
168 sufficient to render the present invention (as presented in
169 currently pending claims 1-26) obvious. It is further submitted
170 that Alaia not only does not teach or suggest the total
171 combination of elements and relationships as presently set forth
172 in the appended claims, but in fact Alaia actually teaches away
173 from the present invention as currently defined by the claims
174 presented in the Appendix.

175
176 The Alaia reference describes a "buyer" offered auction not a
177 "seller" offered auction. The dynamics of each type of auction
178 are totally different with different operational characteristics,
179 goals and results. The claims of the present application are all
180 directed to a seller auction as specifically stated in the
181 claims.

182

183 Alaia specifically states in the Abstract that "the bidding
184 status of a lot can be set to a 'pending' status after the
185 nominal closing time for submission of bids to allow bidders to
186 alert the auction coordinator of technical problems in submission
187 of bids". It is significant to note that **there is necessarily a**

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188 break in the Alaia buyer-auction process. In the present
189 invention, if a predetermined reserve price is not met then an
190 extension is implemented automatically. A break in the auction
191 bidding, as suggested by Alaia, would not solve the problem
192 addressed by the applicant of enabling an uninterrupted continued
193 bidding for an item (not an offer to sell a lot as required in
194 the Alaia buyer's auction) in order to obtain a bid equal to or
195 greater than a predetermined reserve price bid (not in order to
196 synchronize separate and different auction times among several
197 auctions as is taught by Alaia). With the present invention, bids
198 are evaluated compared to the predetermined reserve price number
199 whereas in Alaia, bids are evaluated against a current best bid -
200 there is no mention or even suggestion of anything that might
201 even arguably correspond to a predetermined reserve price as that
202 term is disclosed and claimed in the present application. This
203 distinction is critical because it shows that the two auction
204 systems are quite different and the operational aspects of one
205 system (a buyer system) cannot be substituted for those of
206 another system (a seller system) without a total breakdown of the
207 flow of the seller auction system. That being the case, it is
208 submitted that pieces and parts of a buyer auction system cannot
209 be substituted for, or suggestive of, other pieces and parts of a
210 seller-oriented auction since such a substitution would render
211 the seller auction system inoperable for its intended purpose. A
212 direct substitution of the Alaia bidding extension process would,
213 by definition, depend only on the "current" or "then low" bidding
214 compared to other received bids and would have absolutely no use
215 for a predetermined reserve price designation for initiating an
216 extended bid period, and thus cannot be used to render the
217 claimed extension processing (which includes a "predetermined

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218 reserve price" designator) obvious. There is no teaching or
219 suggestion in Alaia that even contemplates the currently claimed
220 combination of elements and relationships including:

221
222 **"enabling a seller to designate a predetermined reserve price for said item; . . .**

223
224 **determining that none of said price bids is equal to or greater than said predetermined**
reserve price during said auction period;

225
226
227 **determining that an extension of said auction period was authorized by a seller of said item**
if none of said price bids was equal to or greater than said predetermined reserve price;
228
229 **and**

230
231 **automatically extending said auction period if said extension of said auction period was**
232 **authorized."**
233

234 It is also significant to note that a substitution of the Alaia
235 methodology in the applicant's system would render applicant's
236 system inoperable for its stated intended purpose since there
237 **would necessarily be a break in the bidding process, a result**
238 **intentionally avoided by the applicant's methodology.** Further, a
239 substitution of the applicant's methodology in the Alaia system
240 would render the Alaia system inoperable for its stated intended
241 purpose since a break to a "pending" status between conflicting
242 auction closing times could not be achieved. In view of this direct
243 conflict, it is submitted that there can not possibly be a
244 suggestion in Alaia that could render the present invention
245 obvious. **Since a substitution of the Alaia methodology into the**
246 **applicant's system would render the applicant's system inoperable**

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247 for its intended purpose, it is a necessary corollary that Alaia
248 cannot be said to render the present invention obvious.

249
250 It is therefore submitted that claims 1-26 are allowable under 35
251 USC 103(a) over Alaia et al.
252

253
254 **CONCLUSION**
255

256 For the reasons stated above, applicant urges the Board to
257 consider that Alaia et al does not even suggest a method or
258 system for conducting an auction at an auction server for an item
259 offered for sale, in which the method comprises enabling a seller
260 to designate a predetermined reserve price for an item, enabling
261 bidders to be connected to said auction server through an
262 interconnection network, receiving price bids from said bidders
263 for said item during an auction period, determining that none of
264 the price bids is equal to or greater than the predetermined
265 reserve price during the auction period, determining that an
266 extension of the auction period was authorized by a seller of the
267 item if none of the price bids was equal to or greater than the
268 predetermined reserve price, and automatically extending the
269 auction period if the extension of the auction period was
270 authorized, as those functions and relationships are set forth in
271 the pending claims 1-26.

272
273 Consequently, applicant urges that the rejection of claims 1-26
274 under 35 USC 103(a) as being unpatentable over Alaia et al, is
275 not well-founded and should be reversed.

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276
277 Please charge IBM Corporation Deposit Account No. 09-0447 in the
278 amount of \$330.00 for submission of a Brief in Support of Appeal.
279 No additional fee or extension of time is believed to be
280 required; however, in the event an additional fee or extension of
281 time is required, please charge the fee, as well as any other fee
282 necessary to further the prosecution of this application, to the
283 above-identified deposit account.

284 Respectfully submitted,

285

286

287 
288 _____
289

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APPENDIX

APPENDIX

297
298
299 1. A method for conducting an auction at an auction server for an
300 item offered for sale, said method comprising:
301
302 enabling a seller to designate a predetermined reserve price for
303 said item;
304
305 enabling bidders to be connected to said auction server through
306 an interconnection network;
307
308 receiving price bids from said bidders for said item during an
309 auction period;
310
311 determining that none of said price bids is equal to or greater
312 than said predetermined reserve price during said auction period;
313
314 determining that an extension of said auction period was
315 authorized by a seller of said item if none of said price bids
316 was equal to or greater than said predetermined reserve price;
317 and
318
319 automatically extending said auction period if said extension of
320 said auction period was authorized.
321
322 2. The method as set forth in claim 1 and further including
323 enabling said seller to input said predetermined reserve price
324 through an input screen at a seller terminal.
325

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326
327 3. The method as set forth in claim 2 wherein said
328 interconnection network is an Internet interconnection network.
329
330 4. The method as set forth in claim 1 and further including:
331
332 enabling said seller to input said predetermined reserve price
333 prior to said auction.
334
335 5. The method as set forth in claim 4 wherein said predetermined
336 reserve price is input by said seller using a computer device.
337
338 6. The method as set forth in claim 4 wherein said predetermined
339 reserve price is input by said seller using a wireless device.
340
341 7. The method as set forth in claim 4 wherein at least one of
342 said price bids is input by a bidder using a computer device.
343
344 8. The method as set forth in claim 4 wherein at least one of
345 said price bids is input by a bidder using a portable device.
346
347 9. The method as set forth in claim 4 wherein at least one of
348 said price bids is input by a bidder using a wireless device.
349
350 10. The method as set forth in claim 4 wherein at least one of
351 said price bids is input by a bidder using a wireless phone
352 device.
353

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354 11. The method as set forth in claim 1 and further including:
355
356 enabling said seller to designate a duration for said extension.
357
358 12. The method as set forth in claim 11 and further including:
359
360 enabling said seller to designate a number of extensions to be
361 automatically executed so long as none of said price bids equaled
362 or exceeded said predetermined reserve price.
363
364 13. The method as set forth in claim 1 and further including
365 notifying said bidders of said extension.
366
367 14. A storage medium including machine readable coded indicia,
368 said storage medium being selectively coupled to a reading
369 device, said reading device being selectively coupled to
370 processing circuitry within a computer system, said reading
371 device being selectively operable to read said machine readable
372 coded indicia and provide program signals representative thereof,
373 said program signals being effective to enable an auction of an
374 item offered for sale, said program signals being selectively
375 operable for:
376
377 enabling a seller of said item to input a predetermined reserve
378 price for said item;
379
380 receiving price bids from bidders for said item during an auction
381 period;

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382
383 determining that none of said price bids is equal to or greater
384 than said predetermined reserve price;
385
386 determining that an extension of said auction period was
387 authorized by said seller of said item if none of said price bids
388 was equal to or greater than said predetermined reserve price;
389 and
390
391 automatically extending said auction period if said extension of
392 said auction period was authorized.
393
394 15. The medium as set forth in claim 14 and further including
395 enabling said seller to input said predetermined reserve price
396 from a user terminal separate from said auction server.
397
398 16. The medium as set forth in claim 15 wherein said
399 interconnection network is an Internet interconnection network.
400
401 17. The medium as set forth in claim 14 wherein said program
402 signals are further effective for:
403
404 enabling said seller to input said predetermined reserve price
405 prior to said auction.
406
407 18. The medium as set forth in claim 17 wherein said
408 predetermined reserve price is input by said seller using a
409 computer device.

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410 19. The medium as set forth in claim 17 wherein said
411 predetermined reserve price is input by said seller using a
412 wireless device.

413

414 20. The medium as set forth in claim 17 wherein at least one of
415 said price bids is input by a bidder using a computer device.

416

417 21. The medium as set forth in claim 17 wherein at least one of
418 said price bids is input by a bidder using a portable device.

419

420 22. The medium as set forth in claim 17 wherein at least one of
421 said price bids is input by a bidder using a wireless device.

422

423 23. The medium as set forth in claim 17 wherein at least one of
424 said price bids is input by a bidder using a wireless phone
425 device.

426

427 24. The medium as set forth in claim 14 wherein said program
428 signals are further effective for:

429

430 enabling said seller to designate a duration for said extension.

431

432 25. The medium as set forth in claim 24 wherein said program
433 signals are further effective for:

434

435 enabling said seller to designate a number of extensions to be
436 automatically executed so long as none of said price bids equaled
437 or exceeded said predetermined reserve price.

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438

439 26. A computer system comprising:

440

441 a system bus;

442

443 a CPU device connected to said system bus;

444

445 a memory device connected to said system bus; and

446

447 connection means arranged to connect said computer system to a
448 network, said computer system being arranged to conduct an
449 auction of an item offered for sale over said network, said
450 computer system further including input means by which said
451 seller is enabled to input a predetermined reserve price for said
452 item, and a predetermined number of extension periods for said
453 auction, said computer system being selectively operable for
454 receiving price bids from bidders for said item during an auction
455 period and upon determining that none of said price bids is equal
456 to or greater than said predetermined reserve price, to
457 automatically extend said auction period for up to said
458 predetermined number of extension periods so long as none of said
459 price bids is equal to or greater than said predetermined reserve
460 price.

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